

**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
Tuesday, November 24, 2009 – 9:00 a.m. – Room C445 State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Senate Chair  
Rep. Curtis Oda, House Chair  
Sen. Gene Davis  
Sen. Brent H. Goodfellow  
Sen. Mark B. Madsen  
Rep. James R. Gowans  
Rep. Rebecca D. Lockhart  
Rep. Merlynn T. Newbold

**Members Absent:**

Pres. Michael G. Waddoups  
Rep. Carol Spackman Moss

**Staff Present:**

Mr. Arthur L. Hunsaker, Policy Analyst  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Tracey Fredman, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.leg.utah.gov](http://www.leg.utah.gov).

**1. Committee Business**

Chair Oda called the meeting to order at 9:17 a.m.

**MOTION:** Rep. Newbold moved to approve the minutes of the October 30, 2009 meeting. The motion passed unanimously. Sen. Madsen and Rep. Gowans were absent for the vote.

**2. Use of "Liberally Construed" in Statute and Administrative Rule**

Chair Oda explained the purpose of the discussion is to determine whether the liberal construction of any state law or rule is in the best interest of the people of Utah.

Rep. Lockhart gave background and commented on the language "liberally construed" that she had noted in statute and administrative rule which raised the question as to what extent authority is given to the agencies for the drafting of rules.

Mr. Hunsaker distributed "Use of 'Liberally Construed' in Utah Statute" and "Use of 'Liberally Construed' in Utah State Administrative Rules," which together identify each instance of the phrase "liberally construed" as currently found in statute and administrative rule. Mr. Hunsaker reported that two agencies have indicated that the term is not necessary, and that rules are being drafted to remove the phrase "liberally construed."

Ms. Allred commented on some legal considerations of how statutes are worded and interpreted. She said that preferably statutes and rules should be drafted with clarity so that guidance is not necessary for interpretation by courts or agencies.

Mr. Martin Bushman, Assistant Attorney General, assigned to the Division of Wildlife Resources, said the term "liberally construed" is contained in the division's adjudicated proceedings rule and appears in a context which protects the interest of the public. Mr. Bushman did state the division would not be opposed to making a change in language if recommended by the committee.

Mr. Terry Beebe, Environmental Health Director, Utah County Health Department, explained that the phrase "liberally construed" grants interpretive flexibility which allows the opportunity to educate people before enforcing the law with strictness. Mr. Beebe said, however, that he and other environmental health directors across the state have no objection to the removal of the phrase.

Mr. M. Gale Lemmon, Assistant Attorney General, assigned to the Utah Insurance Department, said the term "liberally construed" is used in the department's administrative proceedings rule with the intent of assuring that people are given due process and are not harmed by strict application of the rule.

Mr. Paul McConkie, Assistant Attorney General, assigned to the Utah Division of Air Quality, commented in favor of the flexibility of the phrase "liberally construed" as used in R590-160-5, Rules Applicable to All Proceedings.

**MOTION:** Rep. Gowans moved to direct staff to continue a study of the issue and to separate the instances of usage of the terminology "liberally construed" as found in statute and administrative rule by category where: 1) the terminology is used to grant authority or when the scope of the activity of the division is being set forth; 2) the language is used in the context of due process, where there could be an equitable application; and 3) determine if there is corresponding language in statute for each reference in rule. Rep. Gowans also requested that the item be placed on a future agenda for further consideration. The motion passed unanimously. Sen. Goodfellow was absent for the vote.

#### **4. Committee Business**

The next meeting was scheduled for December 8, 2009, at 9:00 a.m.

#### **5. Adjourn**

**MOTION:** Sen. Davis moved to adjourn the meeting. The motion passed unanimously. Sen. Goodfellow was absent for the vote.

Chair Oda adjourned the meeting at 10:44 a.m.